

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

VANDROTH BACKUS, et al.,	)	
	)	Civil Action No.: 2:11-cv-03120-PMD-HFF-MBS
Plaintiffs,	)	
	)	
v.	)	
	)	
The STATE OF SOUTH	)	
CAROLINA, et al.,	)	
	)	
Defendants.	)	
_____	)	

**Memorandum in Support of Motion to Dismiss by Defendants Marci Andino, in her capacity as Executive Director of the Election Commission, John H. Hudgens, III, Chairman, Cynthia M. Bensch, Marilyn Bowers, Pamela B. Pinson, and Thomas Waring, in their capacity as Commissioners of the Election Commission**

Plaintiffs have filed an Amended Complaint against the State of South Carolina, Governor Nikki Haley, all Commissioners of the State Election Commission, and the Executive Director of the State Election Commission, Lieutenant Governor Ken Ard, Glenn F. McConnell, President Pro Tempore of the Senate, Robert W. Harrell, Speaker of the House of Representatives, James H. Harrison, Chairman of House Judiciary Committee, and Alan D. Clemmons, Chairman of House Elections Law Subcommittee for a declaratory judgment and injunction requesting a three-judge court re-draw a U.S. House of Representatives District, specific S.C. Senate districts, and specific S.C. House districts. Plaintiffs' claims are based on the recent redistricting in South Carolina under Acts 71, 72, and 75.

The Plaintiffs' case arises under the Fourteenth and Fifteenth Amendments to the U.S. Constitution and the Voting Rights Act of 1965, 42 U.S.C. § 1973, et seq. (Amend. Compl., ¶ 5.)

The Plaintiffs' also claim the Court has subject matter jurisdiction under 42 U.S.C. §§ 1981 and 1983 as well. (Amend. Compl., ¶ 6.)

Defendants Marci Andino, in her capacity as Executive Director of the Election Commission, John Hudgens, III, Chairman, Cynthia Bensch, Marilyn Bowers, Pamela B. Pinson, and Thomas Waring, in their capacity as Commissioners of the Election Commission move to dismiss the Amended Complaint based on its failure to state a claim upon which relief can be granted, a lack of subject matter jurisdiction and because the Plaintiffs' lack standing to bring these claims against all of these Defendants. These Defendants are not necessary parties to this case and will obey any order of the Court. These Defendants request this case proceed in an expedited manner due to upcoming deadlines including, statement of intention of candidacy, absentee registration, and absentee ballots.

The primary responsibility for drafting and implementing a redistricting plan in South Carolina always rests with the South Carolina General Assembly, subject to the approval of the Governor. *See U.S. Const. art. I, § 2; S.C. Const. art. III, § 3; see also Colleton County Council v McConnell, et al.*, 201 F.Supp.2d 618, 626 (D.S.C. 2002). In discussing the contrast in duties as between a legislature and federal courts in redistricting the Court in *Colleton County* noted, “[L]egislative reapportionment is primarily a matter for legislative consideration and determination, for a state legislature is the institution that is by far the best situated to identify and then reconcile traditional state policies within the constitutionally mandated framework of substantial population equality.” *Colleton County*, 201 F.Supp.2d at 626; *quoting Connor v. Finch*, 431 U.S. 407, 414-15, 97 S.Ct. 1828, 52 L.Ed.2d 465 (1977) (citations and internal marks omitted). Thus, the General Assembly has responsibility for redistricting in South Carolina while in this case these Defendants have no responsibility for redistricting in South Carolina.

## Argument

### Standing

“It is by now well settled that ‘the irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an ‘injury in fact’-an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of.... Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.’” *U.S. v. Hays*, 515 U.S. 737, 742-43, 115 S.Ct. 2431, 2435, 132 L.Ed.2d 635 (1995) (footnote, citations, and internal quotation marks omitted); quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 2136-37, 119 L.Ed.2d 351 (1992); see also, e.g., *Allen v. Wright*, 486 U.S. 737, 751, 104 S.Ct. 3315, 3324, 82 L.Ed.2d 556 (1984); *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 472, 102 S.Ct. 752, 758, 70 L.Ed.2d 700 (1982).

Plaintiffs’ all assert injury as a result of alleged constitutional violations in this case. Injury is necessary for standing but not sufficient alone. The injury must be “fairly traceable to the defendant’s allegedly unlawful conduct and likely to be redressed by the requested relief.” *Allen v. Wright*, 486 U.S. 737, 751 (1984). The failure to establish all of the standing elements results in a generalized grievance against allegedly illegal conduct by the government which is insufficient for federal justiciability. “The rule against generalized grievances applies with as much force in the equal protection context as in any other.” *U.S. v. Hays*, 515 U.S. 737, 743, 115 S.Ct. 2431, 2435, 132 L.Ed.2d 635 (1995) (plaintiffs who did not live in district subject to racial gerrymandering claim under §2 of the VRA lacked standing); *Northeastern Florida Chapter of Assoc. General Contractors of Am. v. Jacksonville, Florida*, 508 U.S. 656, 663 (1993).

Causation is necessary because if the defendant is the cause of the plaintiff's injury then injury will cease if the defendant's behavior is stopped. Redressability is necessary because the decision of the court must make a difference. Plaintiffs' Amended Complaint must be dismissed because they cannot demonstrate causation as against these Defendants.

Plaintiffs' constitutional claims under the Fourteenth and Fifteenth Amendments and their Voting Rights claim are derived from the effect that redistricting has on their new location in specific districts. However, as a legal and factual matter, there can be no fairly traceable unlawful conduct of Defendants State Election Commissioners, and Executive Director Andino because none of these parties have a role with regard to redistricting. Put simply, none of these parties draw the lines that create the districts that Plaintiffs' allege are unlawful. In addition, there are no acts alleged against the Election Commissioners or Executive Director Andino beyond simply being named as Defendants. (Amend. Compl., ¶¶ 24 and 25.) Defendants State Election Commissioners and Executive Director Andino have responsibilities found mostly in Title 7 of the South Carolina code. The main duties of the Election Commission and its Executive Director are to maintain voter registration lists, prepare ballots, and conduct elections. *See e.g.*, S.C. Code Ann. § 7-1-20, *et seq.* (Supp.2010) (general provisions); S.C. Code Ann. § 7-3-10, *et seq.* (Supp.2010) (creation of Commission and central registration system); S.C. Code Ann. § 7-5-10, *et seq.* (Supp.2010) (qualifications and registration of electors); S.C. Code Ann. § 7-9-10, *et seq.* (Supp.2010) (political party organization); S.C. Code Ann. § 7-11-10, *et seq.* (Supp.2010) (designation and nomination of candidates); S.C. Code Ann. § 7-13-10, *et seq.* (Supp.2010) (conduct of elections); S.C. Code Ann. § 7-15-10, *et seq.* (Supp.2010) (absentee registration and absentee voting only in Articles 3 & 5 of Chapter 15).

The element of redressability is also not met in this case as against these Defendants. Defendants Election Commissioners and Executive Director Andino are simply stakeholders with regard to the location of district lines in this state. Certainly they will abide by any court ruling on this matter as far as where the lines are drawn but, as a practical matter, a federal court ruling that re-draws the district lines in this case would not cause these Defendants to stop any current behavior or engage in any different behavior in the future. Put simply, these Defendants could not draw new election districts even if they wanted to or were ordered to. Thus, Plaintiffs' lack standing to bring these claims against these Defendants in this case.

**Conclusion**

Therefore, for all of the reasons stated above, Defendants Marci Andino, in her capacity as Executive Director of the Election Commission, John H. Hudgens, III, Chairman, Cynthia M. Bensch, Marilyn Bowers, Pamela B. Pinson, and Thomas Waring, in their capacities as Commissioners of the Election Commission are entitled to dismissal with prejudice of Plaintiffs' Amended Complaint in this case.

Respectfully submitted,

s/ J.C. Nicholson, III

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BOWERS, PAMELA B. PINSON, AND THOMAS  
WARING, IN THEIR CAPACITY AS COMMISSIONERS OF  
THE ELECTION COMMISSION

December 19, 2011.